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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,707	07/03/2003	Megan Tobin	63365.010100	5049
32361	7590	07/03/2007		
GREENBERG TRAURIG, LLP MET LIFE BUILDING 200 PARK AVENUE NEW YORK, NY 10166			EXAMINER WILLIAMS, JAMILA O	
			ART UNIT 3722	PAPER NUMBER
			MAIL DATE 07/03/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/613,707

Applicant(s)

TOBIN, MEGAN

Examiner

Jamila O Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/3/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/2/03
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the catch, recited in claim 10; the stuffing of the article, recited in claim 12; at least one animating device, as recited in claim 13, the specific animating, safety and therapeutic devices recited in claims 14-18; the entertainment devices recited in claims 19-20 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The structure sought to be encompassed by this claim is not clear. Additionally, applicant appears to be claiming the combination of an article and a person (neck, waist, shoulder of wearer), which is improper.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1,3,4,5,6,8,9,10,12,13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by 5,897,421 to Rink et al (hereinafter Rink). Rink discloses a plurality of removably attachable segments (figs 1-2), each segment having at least one attachment means (figs 9-11), whereby the segments are removably attached one to the other by the at least one attachment means and where attached the segments form the stand alone animal-shaped toy (the examiner takes the position that these articles are animal shaped, i.e. snake or serpentine. See also column 2 lines 55-56 of the specification) and item of wearing apparel; the article is dimensioned to be worn by a wearer (inherently capable of being worn); the plurality of removably attachable segments are adapted to variably configure the article, as recited in claim 1.

Rink further discloses the removably attachable segments comprise a base (38) and cover segment (4), as recited in claim 3; wherein the removably attachable segments comprise at least one appendage segment (8,14), as recited in claim 4;

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wherein the segments are adapted to variably configure the article so as to form a plurality of animal shapes (figs 2 and 4), as recited in claim 5.

Rink further discloses the segments are adapted to variably configure the article so as to alter the size (figs 2 and 4); wherein the article is worn over a neck, waist or shoulder portion of a wearer (inherently capable of being worn), as recited in claim 6; wherein the article consist of essentially soft material (cotton fabric), as recited in claim 9; further comprising a catch (50), as recited in claim 10; at least one animating, safety, therapeutic or entertainment device, which is a sound generator (sound generator 72), as recited in claims 13-20.

6. Claims 1,2, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by 6,623,328 to Theel. Theel discloses a plurality of removably attachable segments (fig 2) having at least one attachment means (145), where attached the segments form the stand along animal shaped toy (worm, fig 2), as recited in claim 1, wherein the segments comprise at least one head (160) and body (170) segment, as recited in claim 2; wherein the article further comprises at least one external opening (the opening where the rope 210 initially enters the articles) leading to an internal cavity (the cavity within the articles where the rope 210 passes through the articles , see also figure 2 and column 2 lines 29-38) configured to contain at least one belonging (210), as recited in claim 11. Inasmuch as the articles of Theel meet all of the structural limitations of the claims, it is presumed to be inherently capable of the claimed functions.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rink et al.

Rink discloses all of the elements of the claims but for the color. However it would have been obvious to one having ordinary skill in the art at the time the invention was made to change the color of the articles as a matter of design choice and for the purpose of proving a more appealing article for the user.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. This is simply art of interest and was not used to reject any claims in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamila Williams whose telephone number is 571-272-4431. The examiner can normally be reached on Monday-Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
JW

  
MONICA CARTER  
SUPERVISORY PATENT EXAMINER